



Recent Amendments in CENVAT Credit

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Recovery of CENVAT Credit...

Change:

- in rule 3, after the proviso to sub-rule (5B), the following shall be inserted, namely :- “*Explanation.* - If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14, for recovery of CENVAT credit wrongly taken.”
 - (5) inputs/capital goods removed as such
 - (5A) Capital Goods removed after being used
 - (5B) Inputs or Capital goods written off fully/partially



...Recovery of CENVAT Credit

Impact:

- Power to issue SCN
- Invocation of higher period
- Interest
- Penalties



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Capital Goods...

Change:

Dumpers and tippers have been added to item (viii) of sub-clause (A)

Impact:

CENVAT shall be available on dumpers and tippers apart from other motor vehicles (excluding bus, car, truck, motor bike). Earlier the same was not available.



...Capital Goods...

Change:

Substitution of sub-clause (B)



Impact:

All kinds of motor vehicles which are designed for transportation of goods shall be regarded as capital goods for:

- Renting
- Transportation of inputs/capital goods for output service
- Courier agency

...Capital Goods

Change:

Substitution of sub Clause (C):



Impact:

All kinds of Motor Vehicles designed to carry passengers shall be regarded as capital goods for:

- Transportation of passengers
- Renting
- Motor driving skills

Exempted Service

Change:

Export of service has been specifically mentioned **NOT** to be an exempt service

Impact:

No reversal in respect of CENVAT credit on inputs/input services used for providing the same is required



Inputs

Change:

Sub-clause (B) has been substituted



Impact:

Credit of inputs used in construction shall now be allowed to only works contractors. **In the past**, same was allowed to port, other port, airport, commercial/residential complex constructors

Comments:

However, all the above types of activities can be considered to be in nature of 'works contract' if materials are used while providing such services

Output Service



Change:

The definition of 'output service' does not cover:

- Services specified in Negative List
- Services where whole of the Service tax is liable to be paid by the recipient of service

Impact:

CENVAT credit in respect of above services will not be available

Comments:

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Also an Explanation to Rule 3(4) inserted-CENVAT credit can not

Liberalisation of Procedural Rule for Service Providers - Rule 3

Change:

Replacement of phrase 'premises of' by the word 'by' in item (i) of Rule 3



Impact:

Receipt of capital goods or inputs by a service provider with effect from 1 April 2012:

- The requirement in case of service providers is only to receive goods (whether capital goods or inputs)
- The location need not be the premises of such service provider
- As a result, service providers can claim credit of inputs/capital goods even if they have received such goods at a place other than their own premises

Refund of CENVAT Credit...



Rule 5

- **No need to establish nexus of inputs/ input services with the services/goods exported**

The definitions of 'inputs' or 'input services' not been amended and therefore, still it must be proved that the goods/services used are for providing 'taxable output services'

- **No need to prove that adjustment of credit is not possible towards discharge of service tax/duty liability arising on taxable services provided/dutiable goods sold for home consumption**

Above amendments came into effect from 1 April 2012

...Refund of CENVAT credit...



- Refund for exports

Rule 5:

Refund amount = (Export turnover of goods+ Export turnover of services) x Net CENVAT credit /Total turnover

Export turnover of services:

payments received during the relevant period for export services + export services whose provision has been completed for which payment had been received in advance in any period prior to the relevant period

- advances received for export services for which the provision of service has not been completed during the relevant

...Refund of CENVAT Credit

- Rule 5B
- Refund to service providers under reverse charge
- Notified under Section 68 (2) of the Finance Act, 1994
- Unable to utilise CENVAT Credit available on:
 - Inputs
 - Input services



Reversal of CENVAT Credit...

- Manufacturer of dutiable and exempted goods or provider of taxable and exempted services were supposed to reverse CENVAT Credit in case of non-maintenance of books of accounts separately @ 5% which has now been increased to 6%
- Removal of ad-hoc reversal of CENVAT Credit @ 20% in respect of insurance companies

Above amendments came into effect from



...Reversal of CENVAT Credit

- In case of clearance of capital goods after use by a manufacturer or service provider, higher of two is payable now:
 - Central excise duty calculated on the transaction value
 - The value worked out based on the reduction formula as prescribed

Above amendment took effect from 17 March 2012



Input Service Distributor



- Two additional conditions inserted for distribution of credit by Input Service Distributor as under:
 - Credit of service tax attributable to service used wholly in a unit has to be distributed only to that unit
 - Credit of service tax attributable to service used in more than one unit shall be distributed on pro rata on the basis of turnover of concerned unit to the sum total of turnover all the unit to which the service relates
 - Relevant period: previous month/quarter
 - Where there is no relevant period available?
- Above amendments came into effect from 1 April 2012

Other CENVAT Credit Amendments

- All assesseees liable to pay service tax under reverse charge to claim CENVAT Credit on the basis of challan evidencing payment of service tax by them
- Manufacturer, having more than one registered premises, may transfer unutilized CENVAT credit of SAD u/s. 3 (5) of the Customs Tariff Act, from one registered premises to other, on a quarterly basis, subject to certain prescribed conditions

Above amendments came into effect from



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Circular dated 28.03.2012

Can CENVAT be utilised for payment of duties/taxes in arrears?

Proviso to Rule 3(4) :

Provided that while paying duty of excise or service tax, as the case may be, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month or quarter, as the case may be, for payment of duty or tax relating to that month or the quarter, as the case may be





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